DEC 23 1955
HAROLD B. WILLEY, Clerk

No. 587

In the Supreme Court of the United States

OCTOBER TERM, 1955

The Board of Trustees of the University of North Carolina; Arch T. Allen, Secretary to the Board of Trustees of the University of North Carolina: Harris Purks, Acting President of the University of North Carolina; Lee Roy Wells Armstrong, Director of Admissions of the University of North Carolina; and the University of North Carolina, a body incorporate,

APPELLANTS,

v.

LeRoy Benjamin Frasier, Jr., and Ralph Kennedy Frasier, Minors, by their next friends, LeRoy Benjamin Frasier and wife, Oziebel Kennedy Frasier; and John Lewis Brandon, a Minor, by his next friends, William Bell and wife, Eldora Bell,

APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JURISDICTIONAL STATEMENT

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LeRoy Benjamin Frasier, Jr., and Ralph Kennedy Frasier, Minors, by their next friends, LeRoy Benjamin Frasier and wife, Oziebel Kennedy Frasier; and John Lewis Brandon, a Minor, by his next friends, William Bell and wife, Eldora Bell,

APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JURISDICTIONAL STATEMENT

Appellants (defendants in the District Court) appeal from the final judgment rendered by Special Three Judge District Court for the Middle District of North Carolina, convened and sitting pursuant to 28 U.S.C. 2281 and 2284.

OPINION BELOW

The opinion of the District Court is reported in *Frasier* v. *Board of Trustees*, 134 F. Supp. 589 (1955). Copies of the opinion and judgment of the District Court are attached hereto as Appendix A.

JURISDICTION

Appellees (plaintiffs in the District Court), asserting that they had been deprived of their constitutional rights by rule or order of the Board of Trustees of the University of North Carolina denying admission to Negroes, sought a declaratory judgment under 28 U.S.C. 2201 and 2202. Injunctive relief was also sought under 28 U.S.C. 2281 and 2284. The judgment was entered on September 21, 1955. Notice of appeal was filed on November 10, 1955, in the U. S. District Court for the Middle District of North Carolina. The jurisdiction of the Supreme Court to review the judgment by direct appeal is conferred by 28 U.S.C. 1253 and 2101(b).

The jurisdiction of the Supreme Court to review the judgment or direct appeal is also established by the following cases interpreting the statutes:

Query v. *United States,* 316 U.S. 486;

Stratton v. *St. Louis Southwestern Rwy. Co.,* 282 U.S. 10;

Radio Corp. of America v. *United States,* 341 U.S. 412.

The rules or orders of the Board of Trustees of the University of North Carolina, the validity of which are attacked, have not been officially published. They appear only in the minutes of the Board of Trustees. They are correctly copied in Sections 21 and 23 of the complaint. They were adopted April 4, 1951, and May 23, 1955, and read as follows:

Resolution of April 4, 1951:

"In all cases of applications for admission by members of racial groups, other than the white race, the professional or graduate schools when such schools are not provided by and in the State of North Carolina for such racial groups, the applications shall be processed without regard to color or race, as required by authoritative judicial interpretation of the Constitution of the United States, which is the supreme law of our State as well as of the Nation, and the applicant accepted or rejected in accordance with the approved rules and standards of admission for the particular school."

Resolution of May 23, 1955:

"The State of North Carolina having spent millions of dollars in providing adequate and equal educational facilities in the undergraduate departments of its institutions of higher learning for all races, it is hereby declared to be the policy of the Board of Trustees of the Consolidated University of North Carolina that applications of Negroes to the undergraduate schools at the three branches of the Consolidated University be not accepted."

QUESTIONS PRESENTED

(1) Did the District Court err in holding that the State of North Carolina has deprived Appellee Negroes of their rights under the Fourteenth Amendment by denying appellees admission to an institution of higher learning for white students, when the State has provided appellees equal educational opportunities in Negro institutions of higher learning?

(2) Did the District Court err in its judgment in attempting to confer rights on those who were not parties to the action?

STATEMENT

LeRoy B. Frasier, Jr., Ralph K. Frasier, and John L. Brandon, Negro youths of Durham, North Carolina, graduates of a high school in Durham, maintained by the State for the education of its youth, applied to the officers of the University of North Carolina in April 1955 for admission to the Undergraduate Department of the University of North Carolina. The University officials rejected their applications, advising them that, under the rules governing the University and because equal educational opportunities had been provided in Negro institutions of higher learning, Negroes were not accepted in the Undergraduate Departments of the University.

Thereupon, the appellees brought suit in the United States District Court for the Middle District of North Carolina, asserting that the refusal to accept them, or to receive their applications, was a violation of their rights, and privileges,

as secured by the Constitution of the United States. They sought a judgment declaratory of their rights and a mandatory injunction compelling the University to accept their applications.

The appellants filed an answer denying that appellees had been deprived of their constitutional rights. It was admitted that the University had refused to accept their applications because they were Negroes and because the State of North Carolina had made equal provision for Negro youths in colleges supported and maintained by the State for that purpose. It is alleged in Sections 2, 3 and 4 of the further answer of the appellants that the State of North Carolina had for many years maintained a number of colleges for the education of its youth and had expended many millions of dollars to provide at each of these institutions the buildings, facilities and equipment necessary to enable students to pursue successfully courses of study offered at each institution. It was alleged that the State employed at each institution an adequate faculty and administrative and clerical staff of highly trained, skilled, and competent persons, sufficient to afford to each student admitted to such college an opportunity to obtain therein training, instruction, development and education of excellent quality. Section 3 of the further answer alleges:

> "The experience of the State of North Carolina in the operation of these several colleges has demonstrated the effectiveness and adequacy of these colleges for providing for the students duly admitted thereto, opportunity for a sound education of high quality in the course of study offered at the respective institutions, there being no discrimination between Negro, Indian and white students in respect to the quality of educational opportunities afforded such students by the State of North Carolina in such colleges."

The fourth section of the further answer of appellants specifically alleges that the experience of the State of North Carolina has demonstrated the wisdom of that policy from an educational standpoint. It is specifically averred in the answer:

> "The record of the accomplishments of the students admitted to these several colleges through many years, as students, and thereafter as graduates, has demonstrated that the education of Negro students and white students in separate colleges results in a better undergraduate education for Negro students than would be afforded them if Negro and white students were admitted to the same college for undergraduate work, and that such policy does not in any way injure or adversely affect the Negro students, but on the contrary, the State of North Carolina receives in the form of educated citizens of both races a better return upon its investment in such colleges and in the education of students enrolled therein than it would receive if it mixed students of the Negro, Indian and white races in the same college."

When the cause came on for hearing on its merits, appellees moved for judgment on the pleadings. No evidence was offered. Judge Soper, speaking for the Court, in his opinion, says:

> "Plaintiffs [appellees] do not challenge the assertion of the defendants that North Carolina has provided adequate and equal educational facilities for all races in the Undergraduate Departments of its institutions of higher learning."

THE QUESTIONS ARE SUBSTANTIAL

I.

The decision of the Three Judge Court that the plaintiffs' constitutional rights under the Fourteenth Amendment were violated was based on *Brown* v. *Board of Education*, 347 U.S. 483. The *Brown* decision held that under the Fourteenth Amendment separation of the races in public schools is unconstitutional. The decision by the Three Judge Court in this case is erroneous because the decision in the *Brown* case was erroneous, and even if the *Brown* decision is correct, it does not apply to the facts of this case.

First, this Court is asked to overrule the case of *Brown* v. *Board of Education*, for that this Court erred in not recognizing, and so holding that the overwhelming preponderance of

the evidence demonstrates that the Congress which submitted and the States which ratified the Fourteenth Amendment did not contemplate and did not understand that it would abolish segregation in public schools. This Court further erred in overturning its own decisions of many years standing, and the decisions of the highest State courts, that separate but equal facilities meet the requirement of equal rights under the Fourteenth Amendment. This Court, by its holding in the *Brown* case, did not take into account that there is a greater principle under law than the achievement of what this Court or even the majority of the citizens of the forty-eight States may deem a laudable result, and that greater principle is a recognition of and adherence to the law as it is written, as it was intended, and as it has in fact until the very recent past been applied. That principle is a recognition that there must be a respect for the law and obedience to the law that is, without which there can be no law. This Court is asked, and should, overrule the *Brown* case because it is not within the power and authority of this Court to amend the Constitution; that power is given only to the people and their elected representatives. It goes without saying that a question of exceeding the limitations of judicial authority on a constitutional issue of the importance here involved is a substantial question, and the opportunity to correct the error that has been made is a substantial opportunity.

Second, even if the *Brown* decision is assumed, for purposes of argument, to be correct, it does not apply to the facts of this case. That decision dealt with four cases, arising from Kansas, South Carolina, Virginia, and Delaware. In each of these four cases, the question at issue was segregated elementary or high schools, and the question, as stated in the opinion in the *Brown* case, was "Does segregation of children *in public schools* solely on the basis of race . . . deprive the children of the minority group of equal educational opportunities?" Institutions of higher learning, not *public schools*, are involved in this case. It is recognized legal learning, beyond dispute, that the rule of a case applies only to such facts as were before the Court for decision and does not govern a case involving totally different facts. There is a

further factual distinction which precludes the *Brown* decision from controlling here. In each of the four segregation cases, there had been an express finding in the lower courts either that segregation had a detrimental effect on the Negro children, or that the Negro schools were in fact inferior to the white schools as measured by the "separate but equal" rule. In short, there was a finding of fact of inequality in the lower courts. There was no such finding of fact by the District Court in this case. Indeed, it was admitted by the plaintiffs and assumed by the court "that North Carolina has provided adequate and equal educational facilities for all races in the undergraduate departments of its institutions of higher learning." There is no authority, even the modern psychological authority cited by this Court in the *Brown* decision, which supports the judgment in this case. The modern psychological authority relied on by this Court dealt with segregation of *children*, of the "tendency to retard the educational and mental development of Negro children," not of adults attending institutions of higher learning. For these reasons the *Brown* decision does not apply in this case, and neither should it be extended to apply to institutions of higher learning and the education of adults in the absence of a finding, based on competent evidence, that there is in fact an inequality imposed upon the Negro citizens involved.

II.

In any event, the judgment of the District Court in this case should be modified insofar as it purports to apply to all Negroes who may subsequently apply for admission to the undergraduate schools of the Consolidated University of North Carolina. This judgment attempts to confer rights on those who were not parties to this action, and even on those not yet in being. Since the decree cannot bind those Negroes not parties to the suit or who did not come in as intervenors, it cannot and should not be binding on the defendants with respect to any asserted rights by potential plaintiffs of the future. *Moore's Federal Practice, Sections* 23.10-23.12. This Court is asked to consider and hold that the so-called "spurious class action" is indeed *spurious* and, to the extent a judgment

purports to have such a class application, it is erroneous and has no binding effect. The terms of this District Court judgment are such as to impose upon appellants and their successors in office an unreasonable burden of determining, at the risk of contempt of court, whether their action on future applications from Negroes will be accepted by the Federal Courts as in good faith, or whether construed as in defiance of the broad, sweeping terms of this judgment. The present widespread and indiscriminate use of the so-called spurious class action device makes the question of its validity of substantial and grave public importance. This Court, with or without oral argument and submission of briefs, is requested to enter an order modifying the terms of the District Court judgment so as to strike out the "class action" provision.

Respectfully submitted,

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APPENDIX A

THE OPINION OF THE DISTRICT COURT

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

CIVIL ACTION NO. 260

LEROY BENJAMIN FRASIER, JR., et al.
versus
THE BOARD OF TRUSTEES OF
THE UNIVERSITY OF NORTH CAROLINA
et al.

(Hearing September 10, 1955)
BEFORE SOPER AND DOBIE, CIRCUIT JUDGES,
and HAYES, DISTRICT JUDGE

C. O. Pearson, William A. Marsh, Jr., J. H Wheeler and F. B. McKissick of Durham, North Carolina, for Plaintiffs; and William B. Rodman, Jr., Attorney General, North Carolina, and I. Beverly Lake, Assistant Attorney General, North Carolina, for Defendants.

SOPER, CIRCUIT JUDGE:

This suit seeks a declaratory judgment that certain orders of the Board of Trustees of the Consolidated University of North Carolina, which deny admission to the undergraduate schools of the institution to members of the Negro race, are in violation of the equal protection clause of the 14th Amendment of the Constitution of the United States. The plaintiffs also ask for an injunction restraining the University and its trustees and officers from denying admission to the undergraduate schools to Negroes solely because of their race and color. The plaintiffs pray for relief under Rule 23(a) of the Federal Rules of Civil Procedure not only for themselves but also for all other Negro citizens of North Carolina as a class

who possess the qualifications for entrance to the University.

The plaintiffs are three Negro youths who are citizens and residents of North Carolina and graduates of the Hillside High School of Durham, which is accredited by the Southern Association of Secondary Schools and Colleges and by the State Department of Public Instruction of the State. The plaintiffs made formal application for admission to the undergraduate school of the University on April 19, 1955, and accompanied their application with a record of their academic achievements, character and personal references, as required by the rules of the University. On April 27, 1955, they received identical letters from the Director of Admissions in which they were told that the Trustees of the University had not changed the policy of admission of Negroes who were eligible to make application for graduate and professional studies not offered at a Negro college in the state, but were not eligible at that time to apply for admission to the undergraduate schools. Thereupon the plaintiffs requested the University to reverse its policy of discrimination against Negroes and the Board of Trustees in reply, on May 23, 1955, reaffirmed its policy by passing the following resolution:

> "The State of North Carolina having spent millions of dollars in providing adequate and equal educational facilities in the undergraduate departments of its institutions of higher learning for all races, it is hereby declared to be the policy of the Board of Trustees of the Consolidated University of North Carolina that applications of Negroes to the undergraduate schools of the three branches of the Consolidated University be not accepted."

The University of North Carolina is recognized both in Article IX, section 6 of the Constitution of the State, and in Article I, Part 1, section 116-1, of the General Statutes of the State. These enactments provide that the General Assembly of the State shall have power to provide for the election of trustees of the University of North Carolina in whom shall be vested all the rights and privileges granted to the University, and the General Assembly is empowered to make laws and regulations for the management of the University. The General Statutes, in Article 1, Part 1, section 116-2, pro-

vide for the merger and consolidation of the University of North Carolina, The North Carolina State College of Agriculture and Engineering, and the North Carolina College for Women into the Consolidated University of North Carolina. Section 116-10 of the General Statutes empowers the trustees to make such rules and regulations for the management of the University as they may deem necessary and expedient, not inconsistent with the laws of the state.

The resolution of the Board of Trustees of May 23, 1955, above set out was passed under the authority of these constitutional and statutory provisions. The complaint rests upon the invalidity of this order. There is no constitutional or statutory provision which expressly requires the segregation of the races in the University;* and the plaintiffs do not challenge the assertion of the defendants that North Carolina has provided adequate and equal educational facilities for all races in the undergraduate departments of its institutions of higher learning.

Having been refused admission to the University, the plaintiffs brought the present suit, and prayed that a three judge District Court be convened under 28 USCA Secs. 2281 and 2284; and the present court was accordingly established. The defendants contend that the case is not one for a three judge court because there is no constitutional or statutory provision which denies the admission of Negroes to the University or requires the segregation of persons admitted to the University on account of their color.

We hold, however, that jurisdiction exists in the Court, as now set up, because the statute 28 USCA section 2281, requires a three judge court not only when it is sought to restrain the enforcement of an unconstitutional statute, but also the enforcement of an unconstitutional order of an ad-

---

*Segregation of the races in the public schools of the state, provided for children between the ages of 6 and 21 years, is directed by Article IX, Section 2 of the State Constitution; but the defendants contend that this provision does not apply to the University. We need not pass on this contention because, as we have said, the Board of Trustees acted under the authority conferred upon them by the Constitution and laws of the state when they excluded Negroes from the undergraduate schools of the University.

ministrative board or commission, clothed with authority and acting under the law of the State. The jurisdiction of a three judge court was sustained under circumstances precisely similar to those in the case at bar in Wilson v. Board of Supervisors D.C.E.D. La., 92 F Supp 985, which was affirmed without opinion in 340 US 909, and 939. The decision was based on the ground that a three judge court is required when an injunction is sought because of the unconstitutionality of the order of a State administrative board. It is beyond dispute that the State of North Carolina, both by constitution and by statute, has clothed the Board of Trustees of the University with authority to make such rules and regulations for the management of the institution as they deem necessary and expedient, and it follows that the regulation now under attack must be considered a "statute" to which the State has given its sanction within the meaning of the jurisdictional provisions of 28 U.S.C. Sec. 2881. See A. F. of L. v. Watson, 327 U.S. 582, 592; Oklahoma Gas Co. v. Russell, 261 U.S. 290. In McCormick & Co. v. Brown, 4 Cir., 52 F. 2d 934, 937, it was said: "***it is settled that a court of three judges is required not only when the constitutionality of the state statute is involved, but also when the constitutionality of an order of a state administrative board or commission, purporting to be authorized by state statute is drawn into question." See, also, Sunset Lumber Company v. North Carolina Park Commission, 29 F (2d) 823, (4th Cir. 1928), appeal dismissed without consideration, 280 U.S. 615.

It will have been noticed that the resolution of the Board of May 23, 1955, excluding Negroes from the undergraduate schools of the University, was promulgated after the decision of the Supreme Court in Brown v. Board of Education, 347 U.S. 483. In that case on May 17, 1954 the Supreme Court held that "in the field of public education the doctrine of separate but equal has no place," and that the segregation of white and Negro children in the public schools of a State solely on the basis of race denies to Negro children the equal protection of the laws guaranteed by the 14th Amendment.

The only answer to this far reaching decision, and the only defense on the merits of the case offered by the defendants in this suit is that the Supreme Court in Brown v.

Board of Education decided that segregation of the races was prohibited by the 14th Amendment only in respect to the lower public schools and did not decide that the separation of the races in schools on the college and university level is unlawful. We think that the contention is without merit. That the decision of the Supreme Court was limited to the facts before it is true, but the reasoning on which the decision was based is as applicable to schools for higher education as to schools on the lower level. Chief Justice Warren, speaking for the Court, said: (P 493)

> "Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."

Again, quoting from the decision in the Kansas case, he said: (p. 494)

> "Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to (retard) the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racial(ly) integrated school system.

And the final conclusion was stated in these words: (p. 495)

> "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

In view of these sweeping pronouncements, it is needless to extend the argument. There is nothing in the quoted statements of the court to suggest that the reasoning does not apply with equal force to colleges as to primary schools. Indeed it is fair to say that they apply with greater force to students of mature age in the concluding years of their formal education as they are about to engage in the serious business of adult life. We find corroboration for this viewpoint in the decision of the late Chief Justice Vinson in Sweatt v. Painter, 339 U.S. 629 where, in commenting upon the inequality which inheres in the segregation of the races in graduate schools maintained for the teaching of law he said: (634)

> "Moreover, although the law is a highly learned profession, we are well aware that it is an intensely practical one. The law school, the proving ground for legal learning and practice, cannot be effective in isolation from the individuals and institutions with which the law interacts. Few students and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned. The law school to which Texas is willing to admit petitioner excludes from its student body members of the racial groups which number 85% of the population of the State and include most of the lawyers, witnesses, jurors, judges and other officials with whom petitioner will inevitably be dealing when he becomes a member of the Texas Bar. With such a substantial and significant segment of society excluded, we cannot conclude that the education offered petitioner is substantially equal to that which he would receive if admitted to the University of Texas Law School."

Finally, the defendants contend that the pending suit should not be sustained as a class action and the judgment should be confined to those who have appeared and asserted their rights. The representatives of the University seem to be apprehensive that a judgment in favor of all Negroes in North Carolina who may apply for admission to the Uni-

versity may deprive the Board of Trustees of their power to pass upon the qualifications of the applicants. Such is not the case. The action in this instance is within the provisions of Rule 23(a) of the Federal Rules of Civil Procedure because the attitude of the University affects the rights of all Negro citizens of the State who are qualified for admission to the undergraduate schools. But we decide only that the Negroes as a class may not be excluded because of their race or color; and the Board retains the power to decide whether the applicants possess the necessary qualifications. This applies to the plaintiffs in the pending case as well as to all Negroes who subsequently apply for admission.

A judgment and an injunctive order in accordance with this opinion will be issued.

THE JUDGMENT OF THE DISTRICT COURT

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

CIVIL ACTION NO. 260

LEROY BENJAMIN FRASIER, JR., et al.
versus
THE BOARD OF TRUSTEES OF
THE UNIVERSITY OF NORTH CAROLINA
et al.

This cause having come on for hearing on September 10, 1955, on the complaint of the plaintiffs, asking for a declaratory judgment and a permanent injunction, and upon the answer of the defendants thereto, and counsel having been heard by the undersigned Three-Judge District Court, the following facts were stipulated by counsel and are found by the court:

1. The plaintiffs, and each of them, are Negroes and are citizens and residents of the State of North Carolina and the United States.

2. The plaintiffs, and each of them, are graduates of Hillside High School, a public high school which is maintained and operated by and in the City of Durham, North Carolina; and is accredited by the Southern Association of Secondary Schools and Colleges, and by the State Department of Public Instruction of North Carolina.

3. The plaintiffs, and each of them, on or before the 19th day of April, 1955, presented applications to the defendants for admission to the undergraduate school of the Consolidated University of North Carolina at Chapel Hill, for the academic term beginning September 1955, but the defendants refused to receive said applications on the grounds that it is the policy of the Board of Trustees of the Consolidated University that Negroes are not eligible at this time to apply for admission to the undergraduate divisions of the University.

4. In conformity with its policy in respect to the admission of Negroes to the University the Board of Trustees passed the following resolution on the 4th day of April 1951:

> "In all cases of applications for admission by members of racial groups, other than the white race, the professional or graduate schools where such schools are not provided by and in the State of North Carolina for such racial groups, the applications shall be processed without regard to color or race, as required by the authoritative judicial interpretation of the constitution of the United States, which is the supreme law of our State as well as of the Nation, and the applicant accepted or rejected in accordance with the approved rules and standards of admission for the particular school."

In further observance of this policy, the Board of Trustees on the 23rd day of May 1955, after receiving the applications of the plaintiffs, passed the following resolution:

> "The State of North Carolina having spent millions of dollars in providing adequate and equal educational facilities in the undergraduate departments of its institutions of higher learning for all races, it is hereby declared to be the policy of the Board of Trustees of the consolidated University of North Carolina that applications of Negroes to the undergraduate schools at the

three branches of the Consolidated University be not accepted."

Upon these facts the court makes the following conclusions of law:

(1) The orders of the Board of Trustees of the Consolidated University of North Carolina declaring that Negroes are not eligible for admission to the undergraduate schools of the three branches of the University are in violation of the equal protection clause of the 14th Amendment of the Constitution of the United States and are therefore void and of no effect.

(2) The plaintiffs are entitled to a declaratory judgment as prayed under the provisions of 28 U.S.C. §§2201 and 2202.

(3) The suit is properly brought by the plaintiff as a class action under Rule 23(a) of the Federal Rules of Civil Procedure on behalf of all Negroes possessing the qualifications claimed by the plaintiffs, since there is a common question of law affecting their several rights.

(4) This three-judge court has jurisdiction of the cause under 28 U.S.C. §§2281 and 2284, since this is an action for an injunction restraining the enforcement of orders, alleged to be unconstitutional, which were made by the Board of Trustees of the Consolidated University of North Carolina, acting as an administrative Board under the constitution and statutes of the State of North Carolina.

(5) The District Court has jurisdiction under 28 U.S.C. §1343(3), since the suit was brought to redress the deprivation under color of State law and regulation of rights and privileges secured by the Constitution of the United States providing for equal rights of citizens within the jurisdiction of the United States.

(6) The plaintiffs are entitled to an injunction restraining the defendants from refusing to accept the applications of the plaintiffs, and of other persons similarly situated, for admission to the undergraduate schools of the University, and commanding the defendants to receive and process said applications, regardless of the race or color of the applicants.

Wherefore, in consideration of the foregoing findings of fact

and conclusions of law, it is ordered and adjudged that the Consolidated University of North Carolina and the officers and agents thereof charged with the admission of students to the Institution, be enjoined from refusing to receive solely because of race or color, the applications for admission to the undergraduate school of Negroes possessing the necessary qualifications for admission.

It is further ordered and adjudged that the defendants, and the officers and agents thereof charged with the admission of students are required to receive the applications of the plaintiffs, and other Negroes similarly situated, for admission to the undergraduate schools of the Consolidated University of North Carolina, and are herby directed to process the same and pass on the qualifications of the applicants regardless of their race or color.

By agreement of counsel this suit has been dismissed as to the following defendants whose names are set out below, and the above judgment is directed against the remaining defendants only.*

* Gordon Gray,
Clifford Lyons and
Corydon P. Spruill.

MORRIS A. SOPER
United States Circuit Judge

ARMISTEAD M. DOBIE
United States Circuit Judge

JOHNSON J. HAYES
United States District Judge

A TRUE COPY:

TESTE:

HENRY REYNOLDS, CLERK

BY MYRTLE D. COBB
Deputy Clerk

Office - Supreme Court
FILED
JAN 19 1956
HAROLD B. WILLEY,

IN THE

Supreme Court of the United States

October Term, 1955

No. 587

THE BOARD OF TRUSTEES OF THE UNIVERSITY OF NORTH CAROLINA; ARCH T. ALLEN, Secretary to the Board of Trustees of the University of North Carolina; HARRIS PURKS, Acting President of the University of North Carolina; LEE ROY WELLS ARMSTRONG, Director of Admissions of the University of North Carolina; and the UNIVERSITY OF NORTH CAROLINA, a body incorporate,

Appellants,

v.

LEROY BENJAMIN FRASIER, JR., and RALPH KENNEDY FRASIER, Minors, by their next friends, LEROY BENJAMIN FRASIER and wife, OZIEBEL KENNEDY FRASIER; and JOHN LEWIS BRANDON, a Minor, by his next friends, WILLIAM BELL and wife, ELDORA BELL,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MOTION TO AFFIRM

CONRAD O. PEARSON,
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SUPREME PRINTING CO., INC., 114 WORTH STREET, N. Y. 13, BEEKMAN 3-2320

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IN THE

Supreme Court of the United States

October Term, 1955

No. 587

THE BOARD OF TRUSTEES OF THE UNIVERSITY OF NORTH CAROLINA; ARCH T. ALLEN, Secretary to the Board of Trustees of the University of North Carolina; HARRIS PURKS, Acting President of the University of North Carolina; LEE ROY WELLS ARMSTRONG, Director of Admissions of the University of North Carolina; and the UNIVERSITY OF NORTH CAROLINA, a body incorporate,

Appellants,

v.

LEROY BENJAMIN FRASIER, JR., and RALPH KENNEDY FRASIER, Minors, by their next friends, LEROY BENJAMIN FRASIER and wife, OZIEBEL KENNEDY FRASIER; and JOHN LEWIS BRANDON, a Minor, by his next friends, WILLIAM BELL and wife, ELDORA BELL,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MOTION TO AFFIRM

Pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, appellees move that the judgment and decree of the court below be affirmed on the ground that the two (2) questions raised in this appeal are without substance in law or fact and that the judgment of the court below is clearly correct and in accord with the decisions of this Court.

Statement

LeRoy B. Frasier, Jr., Ralph A. Frasier, and John L. Brandon, Negro youths of Durham, North Carolina, are graduates of a high school in Durham, North Carolina, maintained by the state for the education of its youth. The youths applied to the officers of the University of North Carolina in April, 1955 for admission to the Undergraduate Department of the University of North Carolina. The University officials rejected their applications, advising them that, under the rules governing the University, Negroes were not accepted in the Undergraduate Department of the University.

The refusal of the governing body of the University of North Carolina to accept the appellees was based upon two orders of the Board of Trustees of the University of North Carolina as herein set forth:

Order of April 4, 1951:

> "In all cases of applications for admission by members of racial groups, other than the white race, to the professional or graduate schools when such schools are not provided by and in the State of North Carolina for such racial groups, the applications shall be processed without regard to color or race, as required by authoritative judicial interpretation of the Constitution of the United States, which is the Supreme law of our State as well as of the Nation, and the applicant accepted or rejected in accordance with the approved rules and standards of admission for the particular school."

Order of May 23, 1955:

> "The State of North Carolina having spent millions of dollars in furnishing adequate and equal educa-

> tional facilities in the undergraduate departments of its institutions of higher learning for all races, it is HEREBY DECLARED to be the policy of the Board of Trustees of the consolidated University of North Carolina that applications of Negroes to the undergraduate schools of the three branches of the consolidated University be not accepted."

Thereupon, the appellees brought suit in the United States District Court for the Middle District of North Carolina, asserting that the refusal to accept them, or to receive their applications, was a violation of their rights and privileges, as secured by the Constitution of the United States. They sought a judgment declaratory of their rights and a mandatory injunction compelling the University to accept their applications. The judgment was entered on September 21, 1955.

Argument

1. There can be little doubt but that this case was correctly decided by the court below, and that this appeal raises no issues of substance. This Court has settled the question of the right of a State to segregate persons solely because of race in the field of public education. *Brown* v. *Board of Education*, 347 U. S. 483 and *Bolling* v. *Sharpe*, 347 U. S. 497. Since that decision, this Court has made it evident that the constitutional principle laid down in the *Brown* case was not a principle designed to meet a special situation only, but was an announcement of a constitutional doctrine which was to guide American courts in decisions concerning the effect of the Fourteenth Amendment with respect to questions of racial discrimination and segregation

in general. See *Dawson* v. *Mayor,* 220 F. 2d 386 (CA 4th 1955), aff'd, — U. S. —, 100 L. ed. (Adv. p. 75); *Holmes* v. *City of Atlanta,* 125 F. Supp. 290, 223 F. 2d 98, reversed, — U. S. —, 100 L. ed. (Adv. p. 76). See also *National Association for the Advancement of Colored People* v. *St. Louis-San Francisco Ry. Co.,* — I. C. C. —, decided November 7, 1955 and *Keyes* v. *Carolina Coach Co.,* — I. C. C. —, decided November 7, 1955.

2. Appellants seek to becloud the issues here involved by questioning the sweep of the decision below. That argument, we submit, is specious and is completely answered in the opinion review of which is sought here. All that was decided is that the University of North Carolina may not hereafter use race as a criterion in determining the eligibility of persons to attend the University of North Carolina, and that it must admit Negroes to that institution by determining their qualifications for admission on the same basis as that of other persons. This does not mean that the University must admit Negroes who do not possess the qualifications which it requires of other students. All that it does mean is that the University must not refuse to admit a qualified person merely because he is a Negro. This has, in fact, been the reach and import of all of the decisions of this Court which have struck down racial discrimination and segregation as being violative of the Fourteenth Amendment. See *Sipuel* v. *Oklahoma,* 332 U. S. 631; *Sweatt* v. *Painter,* 339 U. S. 629; *McLaurin* v. *Oklahoma State Regents,* 339 U. S. 637.

CONCLUSION

Wherefore, for the reasons hereinabove indicated, it is respectfully submitted, the judgment of the Court of Appeals is correct and this motion to affirm should be granted.

CONRAD O. PEARSON,
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No. 587. BOARD OF TRUSTEES OF THE UNIVERSITY OF NORTH CAROLINA ET AL. *v.* FRASIER ET AL. Appeal from the United States District Court for the Middle District of North Carolina. *Per Curiam:* The motion to affirm is granted and the judgment is affirmed. *William B. Rodman, Jr.*, Attorney General of North Carolina, and *T. W. Bruton, Claude L. Love, Harry W. McGalliard, John Hill Paylor, Peyton B. Abbott, Samuel Behrends, Jr.* and *Robert E. Giles*, Assistant Attorneys General, for appellants. *Conrad O. Pearson, Floyd B. McKissick, John H. Wheeler, Thurgood Marshall* and *Robert L. Carter* for appellees. Reported below: 134 F. Supp. 589.